

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/786,169 Confirmation No. : 3465  
First Named Inventor : Andreas HAYDEN  
Filed : February 26, 2004  
TC/A.U. : 3663  
Examiner : T. C. To  
  
Docket No. : 080437.53242US  
Customer No. : 23911  
  
Title : Method, Device and Computer Product for Updating Data  
of a Control Device

**RESPONSE TO RESTRICTION REQUIREMENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Restriction Requirement dated April 5, 2007, Applicant elects, with traverse, claims 8-20 which the Examiner identifies as Group I and indicates are drawn to a process. Applicant reserves the right to file a divisional application directed toward the non-elected claims.

Initially, Applicant notes that the Restriction Requirement identifies that claim 14 is part of both Groups I and II. Accordingly, clarification of the grouping of this claim is respectfully requested.

Applicant's traversal is on the grounds that there is no serious burden on the Examiner to continue examination of claims 8-25, in the same manner as the Examiner has for at least two Office Actions. As set forth in M.P.E.P. § 808.02 in order to insist upon a restriction an examiner "must explain why there would be a serious burden on the examiner if restriction is not required."

M.P.E.P. § 811, discussing the timing of making a restriction requirement, states that “[b]efore making a restriction requirement after the first action on the merits, the examiner will consider whether there will be a serious burden if restriction is not required.”

There is no indication that the Examiner has considered whether there will be a serious burden if restriction is not required. In fact, there could not possibly be a serious burden because these claims have been thoroughly searched and examined in at least two Office Actions. Moreover, it appears that the classification of the claims of Group II is arbitrary and made solely for the purpose of this Restriction Requirement because none of the prior art applied to reject these claims is classified in the class and subclass identified in the Restriction Requirement.

System claim 14 was examined and rejected along with claims 1-13 and 15-20 in the Office Action of May 4, 2005. Apparatus claims 21-25 were added in Applicant’s Reply of September 6, 2005. The Office Action of December 1, 2005, maintained the rejection of claim 14, and added a new grounds of rejection for claims 21-25. The two patents relied upon to reject claims 21-25 are U.S. Patent No. 6,157,725 to Becker (“Becker”) and U.S. Patent No. 5,887,269 to Brunts et al. (“Bruns”). Becker is classified in class 381, subclass 86. Brunts is classified in class 701, subclasses 208 and 213, and class 240, subclasses 990 and 995.24. It should be noted that neither of these patents are classified in class 701, subclass

70, in which the Restriction Requirement indicates that a search of claims 21-25 needs to be performed.

In response to Applicant's Appeal Brief, an Office Action issued on August 8, 2006, rejects claims 8-25 for anticipation by U.S. Patent Application Publication No. 2003/0093216 to Akiyama. This patent document is classified in class 701, subclasses 200 and 209. This document is not classified in class 712, subclass 220, in which the Restriction Requirement indicates that claims 8-20 should be classified, nor is this document classified in class 701, subclass 70, in which the Restriction Requirement indicates that claims 14 and 21-25 should be classified.

Because the Patent Office has searched, examined and rejected all of Applicant's claims in at least two Office Actions, there cannot be a serious burden on the Examiner to continue to examine these claims together. Moreover, the rejection of claims 8-25 by the Akiyama patent document in the Office Action of August 8, 2006, further demonstrates that there is no serious burden on the Examiner because this rejection indicates that a separate search was not required, as is now being asserted. Furthermore, none of the patent documents relied upon to reject claims 21-25 are classified in the area that the Restriction Requirement indicates that a search of these claims is required. Accordingly, it is respectfully submitted that there is no serious burden on the


Examiner to continue examining claims 8-25 together, as the Examiner has done for at least two Office Actions.

If there are any questions regarding this application, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #080437.53242US).

Respectfully submitted,

April 20, 2007

  
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